

1 E. MARTIN ESTRADA
2 United States Attorney
3 LINDSEY GREER DOTSON
4 Assistant United States Attorney
5 Chief, Criminal Division
6 BENEDETTO L. BALDING (Cal. Bar No. 244508)
7 Assistant United States Attorney
8 Deputy Chief, General Crimes Section
9 ALEXANDER B. SCHWAB (Cal. Bar No. 283421)
10 Assistant United States Attorney
11 Deputy Chief, Corporate and Securities
12 Fraud Strike Force
13 1200/1100 United States Courthouse
14 312 North Spring Street
15 Los Angeles, California 90012
16 Telephone: (213) 894-2274/1259
17 Facsimile: (213) 894-0141
18 E-mail: benedetto.balding@usdoj.gov
19 alexander.schwab@usdoj.gov

20
21 Attorneys for Plaintiff
22 UNITED STATES OF AMERICA

23
24 UNITED STATES DISTRICT COURT

25 FOR THE CENTRAL DISTRICT OF CALIFORNIA

26 UNITED STATES OF AMERICA,
27 Plaintiff,
28 v.
29 DEL ENTERTAINMENT, INC., et
30 al.,
31 (1) DEL ENTERTAINMENT, INC.,
32 (2) JOSE ANGEL DEL VILLAR, and
33 (3) LUCA SCALISI,

34 Defendants.

35 No. CR 22-267-MEMF-1
36 No. CR 22-267-MEMF-2
37 No. CR 22-267-MEMF-3

38 GOVERNMENT'S EX PARTE APPLICATION
39 FOR AN ORDER ALLOWING DISCLOSURE
40 OF GRAND JURY TESTIMONY;
41 MEMORANDUM OF POINTS AND
42 AUTHORITIES; DECLARATION OF AUSA
43 ALEXANDER B. SCHWAB

44
45 Plaintiff, United States of America, by and through its counsel
46 of record, the United States Attorney for the Central District of
47 California, hereby applies ex parte for an order pursuant to Rule
48 6(e) (3) (E) (i) of the Federal Rules of Criminal Procedure,

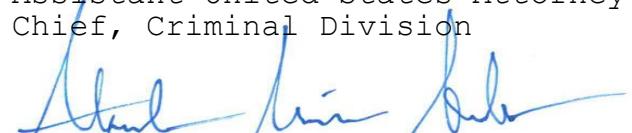
1 authorizing the government to provide defendant's counsel of record
2 with a copy of the grand jury testimony of a witness whom the
3 government may call at trial.

4 The government makes this application because of defendant's
5 need to prepare his case and the disclosure requirements of the
6 Jencks Act, 18 U.S.C. § 3500. This application is based on the
7 attached Memorandum of Points and Authorities and Declaration of
8 Alexander Schwab, the files and records of this case, and such
9 further evidence and argument as may be presented at any hearing on
10 this application.

11 Dated: January 17, 2025 Respectfully submitted,

12 E. MARTIN ESTRADA
United States Attorney

13 LINDSEY GREER DOTSON
Assistant United States Attorney
Chief, Criminal Division

14 
15 BENEDETTO L. BALDING
ALEXANDER B. SCHWAB
Assistant United States Attorneys

16
17
18
19
20
21
22
23
24
25
26
27
28
Attorneys for Plaintiff
UNITED STATES OF AMERICA

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Federal Rule of Criminal Procedure 6(e) (2) (B) provides in
3 relevant part: "Unless these rules provide otherwise, the following
4 persons must not disclose a matter occurring before the grand jury:
5 . . . (vi) an attorney for the government" Fed. R. Crim.
6 6(e) (2) (B). Rule 6(e) (3) (E) provides in relevant part: "The court
7 may authorize disclosure -- at a time, in a manner, and subject to
8 any other conditions that it directs -- of a grand-jury matter:
9 [] preliminarily to or in connection with a judicial
10 proceeding . . ." Fed. R. Crim. 6(e) (3) (E).

11 A trial court has "substantial discretion to order or deny
12 release" of a grand jury transcript. United States v. Evans &
13 Assocs. Constr. Co., 839 F.2d 656, 658 (9th Cir. 1988). The
14 starting point for the Court's analysis is the "long-established
15 policy that maintains the secrecy of the grand jury proceedings in
16 the federal courts." Id. (citation omitted). The Supreme Court has
17 set forth five policy reasons for maintaining the secrecy of grand
18 jury proceedings:

19 (1) to prevent the escape of those whose indictment may be
20 contemplated; (2) to insure the utmost freedom to the
21 grand jury in its deliberations, and to prevent persons
22 subject to indictment or their friends from importuning
23 the grand jurors; (3) to prevent subornation of perjury or
24 tampering with the witnesses who may testify before [the]
25 grand jury and later appear at the trial of those indicted
by it; (4) to encourage free and untrammeled disclosures
by persons who have information with respect to the
commission of crimes; [and] (5) to protect [an] innocent
accused who is exonerated from disclosure of the fact that
he has been under investigation, and from the expense of
standing trial where there was no probability of guilt.

26 United States v. Procter & Gamble Co., 356 U.S. 677, 681 n.6 (1958)
27 (internal quotations omitted); see also United States v. Dynavac,
28 Inc., 6 F.3d 1407, 1411 (9th Cir. 1993) (citing Procter & Gamble and

1 Douglas Oil Co. of Cal. v. Petrol Stops Nw., 441 U.S. 211, 219
2 (1979), for the same proposition). In U.S. Industries, Inc. v.
3 United States District Court, 345 F.2d 18 (9th Cir. 1965), the Ninth
4 Circuit reasoned that a determination whether disclosure of grand
5 jury material should be made under Rule 6(e) depends on the need of
6 the party seeking disclosure and on the "policy considerations for
7 grand jury secrecy as they apply to the request for disclosure under
8 consideration." Id. at 21. The court held that "if the reasons for
9 maintaining secrecy do not apply at all in a given situation, or
10 apply to only an insignificant degree, the party seeking the
11 disclosures should not be required to demonstrate a large compelling
12 need." Id.

13 In this instance, the policy considerations requiring secrecy
14 are weaker post-indictment with respect to those witnesses who will
15 testify at trial. See Dynavac, 6 F.3d at 1412. Moreover,
16 disclosure of the grand jury testimony to defense counsel, who has
17 requested such disclosure, would assist defense counsel in preparing
18 in advance of trial and be consistent with the government's
19 obligations under the Jencks Act, albeit at an earlier stage than is
20 required by statute. See 18 U.S.C. § 3500(a).

21 For the foregoing reasons, the government respectfully requests
22 that this Court issue an order authorizing the government to provide
23 defense counsel with a copy of the grand jury testimony of any
24 witnesses the government may call at trial.

25
26
27
28

DECLARATION OF ALEXANDER B. SCHWAB

I, Alexander B. Schwab, declare and state as follows:

3 1. I one of the Assistant United States Attorneys handling
4 the prosecution of United States v. Del Entertainment, et al., CR
5 No. 22-267-MEMF. I make this declaration in support of the
6 government's ex parte application for an order permitting disclosure
7 of a grand jury transcript.

8 2. I expect that the government may call at trial a witness
9 who testified before the grand jury during the investigation of this
10 case. Such testimony constitutes a statement under the Jencks Act,
11 18 U.S.C. § 3500, which the government will eventually be required
12 to provide to the defendants once that witness testifies at trial.

13 3. On or about January 16, 2025, I contacted defense counsel
14 and informed them that the government would be filing the present ex
15 parte application and asked for their position on the ex parte
16 nature of the application. Defense counsel informed me that they do
17 not oppose the application or the ex parte nature of the
18 application.

19 I declare under penalty of perjury under the laws of the United
20 States of America that the foregoing is true and correct and that
21 this declaration is executed at Los Angeles, California, on January
22 17, 2025.


Alexander B. Schwab

25
26
27
28